IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

Crl.MC.No. 3410 of 2007()

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CC.37/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHERTHALA
CC.864/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHERTHALA

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PETITIONERS: ACCUSED

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1. SHANKARAN, S/O.KOCHOLA, PULITHARA, THURITHIBHAKOM MURI, AROOKUTTY GRAMA PANCHAYATH, AROOKUTTY.

2. ULLASAN, S/O.SHANKARAN, PULITHARA, THURITHIBHAKOM MURI, AROOKUTTY GRAMA PANCHAYATH, AROOKUTTY.

3. GOPALAN, S/O.SHANKARAN, PULITHARA, THURITHIBHAKOM MURI, AROOKUTTY GRAMA PANCHAYATH, AROOKUTTY.

4. RASHEED, S/O.ALIYAR, WARD NO.X, PULITHARA, THURITHIBHAKOM MURI, AROOKUTTY GRAMA PANCHAYATH, AROOKUTTY.

5. VALSALAN, S/O.KUNJAN, VELLAPANAT, WARD NO.X, AROOKUTTY GRAMA PANCHAYATH, AROOKUTTY.

6. SAYED MOHAMMED, S/O.PAREED, 'THANOOF MANZIL', WARD NO.X, AROOKUTTY GRAMA PANCHAYATH, AROOKUTTY.

7. VISWAMBARAN, S/O.THEVAN, VATTATHARA, WARD NO.X, AROOKUTTY GRAMA PANCHAYATH, AROOKUTTY.

BY ADV. SRI.A.DINESH RAO

RESPONDENTS: STATE & COMPLAINANT
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1. STATE OF KERALA,
   REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA,
   ERNAKULAM.

2. ABDULLA, S/O.MOHAMMED,
   'PUNNATHARA VEEDU', WARD NO.X,
   AROOKUTTY GRAMA PANCHAYATH,
   AROOKUTTY.

R1- BY P.P.SRI.P.RAVEENDRA BABU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**Crl.M.C.No. 3410 of 2007**

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Dated this the 15th day of November, 2007

**ORDER**

Petitioners face allegations in two cases - one instituted on a Police report and other on a private complaint filed by the 2nd respondent herein. In the Police complaint also the crime was registered on the basis of the F.I statement lodged by the 2nd respondent herein.

2. The allegations relate to an incident which took place on 18.6.06. According to the 2nd respondent, he had constructed a bund by the side of the property which has been destroyed by the petitioners on 18.6.06. Raising these allegations he filed a civil suit on 20.6.06. He also filed a complaint before the Police on 22.6.06. The Police conducted investigation and filed a final report arraying only petitioners 1 to 5 as accused. It was alleged that they have committed offence under Sec.447 and 427 read with 34 IPC.

3. The 2nd respondent is dissatisfied with the investigation conducted by the Police. He is dissatisfied about the quality of the investigation conducted as also the conduct of the Police

dropping accused 6 and 7 from the array of the accused. He therefore filed a private complaint on 3.7.07 raising allegations against all the seven accused. The learned Magistrate has taken cognizance on the basis of the said complaint. Both the cases are pending before the learned Magistrate.

4. The learned counsel for the petitioners contends that the dispute is essentially one of civil nature. The 2nd respondent is already before the Civil Court seeking remedies under the civil law. In these circumstances the initiation of the criminal proceedings against the petitioner on the basis of the final report submitted by the Police and later a protest complaint filed by the 2nd respondent are both bad and liable to be quashed invoking the powers under Section 482 Cr.P.C. This in short is the contention raised.

5. I am afraid, I am unable to accept the prayer to quash the proceedings invoking extraordinary inherent jurisdiction under Section 482 Cr.P.C. It cannot possibly be held at this stage that the allegations raised against 1 to 5 in both cases and against accused 6 & 7 in the protest private complaint if true do not and cannot constitute the offence alleged under Secs.427,447read with 34 IPC. The allegations, if accepted, do certainly constitute the offences. Whether these allegations are

acceptable, cannot obviously be decided in proceedings under Section 482 Cr.P.C. In fact the learned counsel for the petitioner presses only one contention severely. The learned counsel for the petitioner submits that as the 2nd respondent has already been resort to the civil adjudicatory processes, the initiation of the criminal proceedings is not justified. I am satisfied that this contention cannot be accepted in principle. The same event may justifiably give rise to an action under the Civil law and a cause of action for initiating steps under the criminal adjudicatory process. Merely because the victim has chosen to invoke civil adjudicatory process it cannot be held that the criminal adjudicatory process is out to bounds for him.

6. I shall carefully avoid any further and more detailed discussions on the acceptability of the allegations. Suffice it to say that, in these circumstances explained, I do not find any reason to invoke the extraordinary inherent jurisdiction under Section 482 Cr.P.C to quash either of the two proceedings already initiated against the petitioners. This petition is accordingly dismissed.

**(R.BASANT, JUDGE)**

sj